

### **REMARKS**

Claims 1-12 are pending in this application. By this amendment claims 1, 4-10, and 12 have been amended. Reconsideration is respectfully requested.

### **ALLOWABLE SUBJECT MATTER**

The Examiner has indicated that claims 9 and 12 contain allowable subject matter and would be allowable if re-written into independent form. Accordingly, the recitations of base claims 7 and 10 have been added to claims 9 and 12, respectively—except that the word “keyboard” has been omitted as being an unnecessary limitation given the subject matter deemed to be allowable. It is submitted that claims 9 and 12 are therefore now in condition for allowance.

### **REMAINING REJECTED CLAIMS**

The primary reference relied upon by the Examiner is Shimatani, which relates to an editor that allows a user to do search and replace operations upon parameters within song data. Figure 6 of the Shimatani reference shows the basic functionality performed. For the Examiner’s convenience, a translation of the flowchart of Figure 6 is provided below:

- song data changing mode starts here SA1
- choose the song data you would like to change SA2
- copy the selected song data to edit buffer S1
- choose track S2
- show the initialization data S3
- choose the parameter you want to change S4
- change the selected parameter S5
- search for selected parameter in the musical performance data, starting at the beginning of the data S6

- does the parameter exist? S7

if yes:

- change the parameter data S8
- search for the existence of the parameter in the musical performance data, starting from one after the changed data S9

While the Shimatani reference does show the basic search and replace functionality, it does not describe the specific functionality provided by the present invention. The present invention is preconfigured to seek out, and alter if necessary, any parameters that meet certain criteria, with the objective to produce a musical composition where the reproduction state is constant. In other words, the applicants' invention is configured to produce a "constant state" musical composition automatically, based on a predefined algorithm defined within the device. See applicants' Figure 4, which shows a preferred embodiment of a predefined algorithm. To achieve the same effect with Shimatani, the user would need to manually specify each of the desired parameters and perform search and replace operations on each.

In order to more fully distinguish the applicants' invention from Shimatani, the claims have been amended to more fully recite the present invention's preconfigured nature. For example, in claim 1, the determining device is described as determining whether the imaging changes based upon a predefined algorithm defined within the determining device that specifies conditions under which said imaging changes within the musical composition are deemed to exist. Shimatani does not have such a predefined algorithm used for this purpose. Claim 4 has been similarly amended.

Similarly, claim 5 had been amended to recite that the determining device determines based upon a predefined algorithm defined within the determining device whether acoustic control codes for controlling effects specified by said predefined algorithm are contained in source musical composition data. Again, Shimatani does not employ a predefined algorithm for this purpose.

Amendments of similar scope have been made to the remaining claims 6, 7, and 10.

#### **REJECTIONS UNDER 35 U.S.C. § 101**

Claims 4 and 6 are program claims to which the Examiner gave rejections under 35 USC §101. Accordingly, these claims have been amended to recite that they are programs “encoded on a computer-readable medium”. It is respectfully submitted that the claims are now statutory subject matter under §101.

#### **CONCLUSION**

In view of the foregoing amendments, it is respectfully submitted that the claims are now in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 08-0750, under Order No. 2552-000056/US from which the undersigned is authorized to draw.

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Respectfully submitted,

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